No. 80-710

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*,
Petitioners,

v.

LOCAL 334, UNITED ASSOCIATION ETC., *et al.*,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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PETITIONERS' REPLY MEMORANDUM

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A. Respondent would sweep the chessmen off the board by restating the Question Presented to be whether § 301(a) of the LMRA "grants jurisdiction to the United States District Courts in cases which involve solely intra-union issues." (Br. Opp. i.)[1] That reformulation begs one of the disputed issues, which is whether the Court

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[1] "Br. Opp." refers to the Brief in Opposition to the Petition for Certiorari. "Pet." refers to the Petition for Certiorari.

of Appeals properly so characterized the allegations of the complaint (Pet. 18a) for purposes of § 301 jurisdiction; in this respect the Court of Appeals' decision conflicts with those of the First and Seventh Circuits discussed at Pet. 12-14. See also point C, *infra*, pp. 2-5. And even respondent's version of the question presented merits review under this Court's Rule 17 because, under the decisions of the Second, Fourth and Sixth Circuits quoted at Pet. 7-9, there is § 301 jurisdiction over suits between a local and International union for breach of the International's constitution without regard to whether the underlying dispute has any impact on labor-management relations.

B. These decisions, which the respondent perforce ignores, also refute its first point, that "The Courts of Appeals uniformly have held that jurisdiction is not present under Section 301(a) of the Labor Management Relations Act of 1947 in an union dispute which has no effect on labor-management relations." (Br. Opp. 4.) As Judge Friendly said in one of those cases, "On its face, this language [of § 301(a)] constituted a clear predicate for jurisdiction at the time the complaint was brought to enforce the relevant provisions of the NALC Constitution." [2]

C. Respondent's second point is, "Consistent with the decisions of other Courts of Appeals, the Third Circuit Court of Appeals properly held that the facts did not support a finding of a significant impact on labor-management relations." But the decision below is *not* consistent with that of the First Circuit in *Local 1219, etc.*[3] or that of the Seventh Circuit in *Local Union No.*

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[2] *National Association of Letter Carriers* v. *Sombrotto*, 449 F.2d 915 (2nd Cir. 1971), more fully quoted at Pet. 8.

[3] *Local Union 1219, United Brotherhood of Carpenters and Joiners* v. *United Brotherhood of Carpenters and Joiners*, 493 F.2d 93 (1st Cir. 1974).

657, etc.[4] The heart of the matter is that when it determined that "this suit raise[es] solely intra-union issues" (Pet. 18), the court gave that standard a wholly artificial meaning—one quite different from that of the First and Seventh Circuits when they found § 301 jurisdiction over actions which are indistinguishable from the present. (See Pet. 12-14.) The *Local 1219* and *Local 657* actions were challenges under an international union constitution to the restructuring of local union jurisdiction, which changed the identity of the unions which negotiated and contracted with the employers, and which allegedly affected the employment opportunities of the plaintiff local's members. In arguing that the decision below does not conflict with those decisions, respondent misreads them.

Respondents' description of *Local Union 1219, etc.* (Br. Opp. 8-9) simply disregards Judge Aldrich's discussion of the issue of jurisdiction under § 301, 493 F.2d at 95-96, much of which is quoted at Pet. 12-13, n.2. The First Circuit's ultimate conclusion that the contract (that is, the International constitution) did not support the plaintiff's claim resulted in dismissal of the complaint on the *merits*; but before reaching the merits he properly inquired whether there was federal jurisdiction, and determined that there was. That is precisely the course followed by the District Court in the instant case, and which should have been sustained by the Court of Appeals.[5]

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[4] *Local Union No. 657, United Brotherhood of Carpenters and Joiners* v. *Sidell*, 552 F.2d 1250 (7th Cir.), *cert. denied*, 434 U.S. 862 (1977).

[5] Since the First Circuit *did* decide the issue of § 301 jurisdiction, respondent's statement that the Court ruled "without ever mentioning the issue of impact", is self-defeating. For, if the *Local 1219* opinion, which clearly holds that a union constitution is a "contract" for purposes of § 301, is read as not requiring a showing

Respondent's attempt to distinguish the Seventh Circuit's decision in *Local 657* on the ground that the complaint there alleged " 'immeasurable harm and interference' with the relationship between the local and the employers" (Br. Op. 9) wrests a single phrase out of the following passage in the Court's opinion:

> However, in the present case, plaintiff does possess a charter and has posited a similar employer dilemma. In its complaint, plaintiff alleged:
>
> > "[t]hat the plaintiff Local has been in existence over seventy-five years and has established stable and harmonious working relationships through contracts with contractors of Sheboygan County, Wisconsin and that to cause the plaintiff Local to be governed by contracts formulated and promulgated by the Fox River Valley District Council as mandatory upon plaintiff Local would cause immeasurable harm and interference with its present relationship and contracts with its employers."
>
> Thus here we have an allegation affecting the local's relationship with employers, rather than the mere intra-union organizational change involved in *1199 D.C.*[6]

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of impact, then the First Circuit's approach to § 301 is to be aligned with that of the Second, Fourth and Sixth decisions and would conflict with the decision below for that reason. Although this would be a permissible reading, *Local 1219* may also be read as holding only that § 301 jurisdiction lies where the suit is not purely over internal affairs, and that Local 1219's suit qualified under that standard. Rather than risk overstating the First Circuit's holding, the Petition chose the narrower of those interpretations. But it really does not matter which interpretation is correct, since on either view the First Circuit's decision is in clear conflict with that of the Third Circuit in this case.

[6] 552 F.2d at 1255. *"1199 D.C."* refers to the decision of the District of Columbia Circuit described at Pet. 10.

Here, as in *Local 657*, "we have an allegation affecting the local's relationship with employers", since by virtue of the International's challenged consolidation order the two successor locals, rather than the original nine locals, will negotiate and contract with the employers. And, while respondent now strains to downplay its own complaint (Br. Opp. 8, 9) it there alleged, *inter alia*, that:

> "* * * each member of plaintiff will have to compete * * * with a large group of journeymen and will lose the advantage of their present positions on the out of work list of plaintiff. Therefore, there will be immediate and irreparable injury to the property rights of the members of plaintiff unless defendant is restrained and enjoined from disbanding Local 334 and enforcing the Order of Consolidation." [7]

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[7] Amended Complaint, ¶ 28, quoted more fully at Pet. 4.

CONCLUSION

In sum, while the decision of the Court below—that there is no § 301 jurisdiction over this action—is in accord with the decision of some other Courts of Appeals (see Pet. 9-10), it cannot be reconciled with those of the First, Second, Fourth, Sixth and Seventh Circuits. The conflict should be resolved here and now, particularly since, as respondent does not deny, the jurisdictional issue, however phrased, is important and recurring.

Respectfully submitted,

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